Supreme Court, U.S.
FILED
NOV 29 1993
OFFICE OF THE CLERK

No. 93-666

In the Supreme Court of the United States

OCTOBER TERM, 1993

MAHER TERMINALS, INC., CROSS-PETITIONER

v.

PASQUALINO SANTORO, ET AL.

ON CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

DREW S. DAYS, III
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

THOMAS S. WILLIAMSON, JR.
Solicitor of Labor

STEVEN J. MANDEL
Deputy Associate Solicitor

EDWARD D. SIEGER
Senior Appellate Attorney
Department of Labor
Washington, D.C. 20210

QUESTION PRESENTED

Whether the court of appeals abused its discretion by remanding this case to an administrative law judge for further proceedings, rather than directing entry of judgment for cross-petitioner.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	2
Statement	3
Argument	3
Conclusion	5

TABLE OF AUTHORITIES

Cases:

Ford Motor Corp. v. *NLRB*, 305 U.S. 364 (1939)	4
Greenwich Collieries v. *Director, OWCP*, 990 F.2d 730 (3d Cir. 1993)	3
Icicle Seafoods, Inc. v. *Worthington*, 475 U.S. 709 (1986)	3
Kelly v. *Southern Pacific Co.*, 419 U.S. 318 (1974)	3
Mullins Coal Co. v. *Director, Office of Workers' Compensation Programs*, 484 U.S. 135 (1987)	2
Pullman-Standard v. *Swint*, 456 U.S. 273 (1982)	3
U.S. Industries/Federal Sheet Metal, Inc. v. *Director, OWCP*, 455 U.S. 608 (1982)	4

Statutes and regulation:

Administrative Procedure Act, 5 U.S.C. 556(d) (§ 7(c))	2
Black Lung Benefits Act, 30 U.S.C. 901 *et seq.*	2
Longshire and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.*	2
20 C.F.R. 718.403	3

In the Supreme Court of the United States

OCTOBER TERM, 1993

No. 93-666

MAHER TERMINALS, INC., CROSS-PETITIONER

v.

PASQUALINO SANTORO, ET AL.

ON CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION[1]

OPINIONS BELOW

The opinion of the court of appeals (93-474 Pet. App. A1-A16[2]) is reported at 992 F.2d 1277. The decision of the Benefits Review Board (93-474 Pet. App. A17-A25) is unreported, as are the decisions of the administrative law judge (93-474 Pet. App. A26-A45, A46).

---

[1] In addition to the parties listed in the caption, the Director of the Office of Workers' Compensation Programs of the Department of Labor was a respondent in the court of appeals.

[2] "93-474 Pet. App." refers to the appendix to the petition for a writ of certiorari in *Santoro* v. *Maher Terminals, Inc.*, No. 93-474, which seeks review of the same decision of the court of appeals.

JURISDICTION

The court of appeals entered its judgment on April 19, 1993, and denied petitions for rehearing on June 25, 1993. The claimant, Pasqualina Santoro, filed a petition for a writ of certiorari on September 23, 1993 (No. 93-474), and the employer filed this cross-petition on October 22, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

The primary issue in this case is the validity of a principle of adjudication—the "true doubt" rule—that the Department of Labor has for many years applied in resolving benefit claims under the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 *et seq.*, and the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.* That rule provides that when evidence submitted by the claimant and by the party opposing an award of benefits is of equal weight, the remaining doubt is resolved in favor of the claimant. See, *e.g.*, *Mullins Coal Co.* v. *Director, Office of Workers' Compensation Programs (OWCP)*, 484 U.S. 135, 144 n.12 (1987); 93-474 Pet. App. A2.

In this case, which arose under the LHWCA, an administrative law judge (ALJ) awarded benefits to the claimant after invoking the "true doubt" rule. 93-474 Pet. App. A39, A44; see also *id.* at A46 (order denying reconsideration). The Benefits Review Board affirmed. *Id.* at A17-A24. The court of appeals vacated the award, holding that application of the "true doubt" rule is inconsistent with Section 7(c) of the Administrative Procedure Act, 5 U.S.C. 556(d), which the court construed to require a benefits claimant to bear "the ultimate burden of persuasion by a

preponderance of the evidence." 93-474 Pet. App. A14, A15-A16. Because it was not clear to the court whether the ALJ, "upon reaching the point of equipoise, and believing the true doubt rule to be valid, * * * [had] halted his inquiry short of deciding whether Mrs. Santoro's evidence preponderated," the court directed the Board to remand the case for the ALJ to make that determination. *Id.* at A16.

The claimant, Pasqualina Santoro, filed a petition for a writ of certiorari, No. 93-474, seeking review of the court of appeals' invalidation of the "true doubt" rule. The Solicitor General, on behalf of the Director, OWCP, has also filed a petition for a writ of certiorari (No. 93-744) seeking review of the judgments of the court of appeals in this case and in *Greenwich Collieries* v. *Director, OWCP*, 990 F.2d 730 (3d Cir. 1993), in which the court of appeals held that the "true doubt" rule is inconsistent with this Court's decision in *Mullins Coal* and with one of the Department's regulations implementing the BLBA (20 C.F.R. 718.403). In this cross-petition, the employer argues that the court of appeals erred by remanding the case to the ALJ, instead of reversing the award of benefits outright.

ARGUMENT

"[W]here findings are infirm because of an erroneous view of the law, a remand is the proper course unless the record permits only one resolution of the factual issue." *Pullman-Standard* v. *Swint*, 456 U.S. 273, 292 (1982); see also *Kelley* v. *Southern Pacific Co.*, 419 U.S. 318, 331-332 (1974); *Icicle Seafoods, Inc.* v. *Worthington*, 475 U.S. 709, 714 (1986). Moreover, on judicial review of agency action, once a court identi-

fies legal error affecting an agency's factual findings, remand to the agency for further proceedings is not only squarely within the court's remedial powers, but usually the preferred course of action, because it enables the agency to resolve in the first instance matters that Congress has committed to the agency. See *Ford Motor Co.* v. *NLRB*, 305 U.S. 364, 373-374 (1939),

The court of appeals applied those principles here. The court determined that the ALJ had erroneously relied on the "true doubt" rule in weighing the evidence concerning the benefits claim, and it remanded because it was uncertain which conclusion the ALJ would have reached without resort to the "true doubt" rule. 93-474 Pet. App. A1-A14. The cross-petition relies on what it characterizes (Cross-Pet. 6) as "the ALJ's two holdings * * * that the doubt rule was employed * * * to award benefits because the proofs were *not better than in* 'equipoise.'" As the court of appeals pointed out (93-474 Pet. App. A16), however, it is also possible that the ALJ determined only that the proofs were *at least* in equipoise—that is, that "upon reaching the point of equipoise, and believing the true doubt rule to be valid, the ALJ halted his inquiry short of deciding whether Mrs. Santoro's evidence preponderated." The court of appeals' decision to remand the case to the ALJ to resolve that ambiguity was well within its discretion, affects only the parties to this case, and does not merit review by this Court.[3]

---

[3] Contrary to cross-petitioner's contention (Cross-Pet. 6), the court of appeals' decision to remand the case does not conflict with the decision in *U.S. Industries/Federal Sheet Metal, Inc.* v. *Director, OWCP*, 455 U.S. 608 (1982). That case involved a remand to consider "[a] claim that was not made,"

For the foregoing reasons, the cross-petition should be denied. In the alternative, the Court may wish to hold the cross-petition in this case pending the decision of No. 93-474 on the merits, and to dispose of the cross-petition in light of that decision.

CONCLUSION

The cross-petition for a writ of certiorari should be denied.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

THOMAS S. WILLIAMSON, JR.
Solicitor of Labor

STEVEN J. MANDEL
Deputy Associate Solicitor

EDWARD D. SIEGER
Senior Appellate Attorney

NOVEMBER 1993

---

and that even if made would not have satisfied the statute's threshold requirement that a claimed injury have arisen "in the course of employment." *Id.* at 616. There is no dispute in this case that Mrs. Santoro's claim was properly made and allowable, provided that the ALJ agreed with her factual contentions after applying the appropriate standard of proof. Cross-petitioner also argues (Cross-Pet. 5) that the claimant "agreed [in the court of appeals] that the ALJ had found that the evidence supporting her claim did *not* preponderate." The claimant appears to have argued below, however, both that the ALJ applied the "true doubt" rule, and that the ALJ found the claimant's evidence more persuasive than cross-petitioner's. Resp. C.A. Br. 15-16, 25.